

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application. Claims 1-9 and 11-17 remain in the application and claim 1 is independent. The Office Action dated December 24, 2009 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Legal Standard for Anticipation and Obviousness Rejections

According to MPEP § 2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ...claims." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989).

Similar to anticipation rejections, in order to establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1395 (2007) (citing *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

Claim Rejections – 35 U.S.C. § 102 and 103 based upon Browne

Claims 1-6, 9-12 and 14-16 stand rejected under 35 U.S.C. § 102(b) as unpatentable over Browne. Claims 13 and 17 stand rejected as obvious over Browne. Claims 7 and 8 stand rejected as obvious over Browne in view of Graue. Applicant respectfully traverses the rejections. A complete discussion of the Examiner's rejections is set forth in the Office Action, and is not being repeated here.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicant respectfully submits that independent claim 1 has been amended to recite a combination of elements in a tool for removing ticks

including that a thickness of the cutter blade is less than a size of a head of a tick at the outer opening. Applicant respectfully submits that this combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Browne.

The Examiner states that the device of Browne is "capable" of removing ticks. With all due respect, the device of Browne is neither disclosed as capable of removing a tick in the manner disclosed, nor does it have the specific structure now recited that requires that the cutter blade have a thickness less than the size of a head of a tick. Therefore, Browne neither anticipates the claimed structure nor does it render the claimed structure obvious. Note that it is a feature of one embodiment of the invention, as seen in original Figures 4 and 9, that the thickness of the cutter blade is less than the size of the head of a tick 17. Because of this specific dimension, it is possible to slide the front of the lowermost part 11a of the tool between the head of the tick and the skin 16. Then, one single sliding movement of the tool lifts the tick from the skin by the action of the lowermost parts of the V-shaped groove. This can clearly be seen in Figure 4. There is nothing in the disclosure of the tick puller of Browne that shows or suggests this particular dimension or the resultant function. Moreover, of the prior art in the record that relates to the art of tick pullers, none shows this dimension or even suggests that that this dimension might be important. And no reference discloses or suggests the resultant function that permits removal of the tick's head, in addition to removal of the rest of the tick. It is clearly desirable that the entire tick be removed, including the head, which is possible only by means of this claimed size relationship.

The Examiner cites Graue for a showing of increasing height. To the contrary, Graue, like Browne, is for pulling ticks. Graue discloses no dimensions at all and discloses no cutter blade, much less a specific small dimension of a cutter blade. There is simply nothing in Graue that would remedy the deficiencies of Browne discussed above. Applicant respectfully submits that the combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Browne and Graue, for the reasons explained above. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Applicant further submits that it is clear the Examiner has performed an appropriate search of tick pullers that resulted in making a number of known tick pullers of record, such as Alvino, Heitz and Hebbard. It is also clear from the citation of prior art that the Examiner has

already conducted a complete and thorough search based upon the application disclosure, as directed in MPEP § 904.03. It is submitted this amendment raises no new issues because the Examiner has already searched for and cited the closest known tick pullers. It is respectfully submitted that because no reference, alone or in combination, shows or suggests the instant claimed combination of features, the amended claims are patentable over the closest prior art which is already of record.

Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

Dated: April 21, 2010

Respectfully submitted,

By

Charles Gorenstein

Registration No.: 29271

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road, Suite 100 East

P.O. Box 747

Falls Church, VA 22040-0747

703-205-8000